



Policy Guidance Note:

TP4 Enforcement of Tree Protection

August 2010

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Introduction

The purpose of this document is to set the framework for dealing with tree enforcement issues in a clear, consistent and fair manner and to ensure that activities in this regard are in accordance with current legislation and guidance and wider Council policies. This document contributes directly to the delivery of the Council's Tree Policy (Trees East Lindsey: Part One), and specifically Policy TP 4 below:

TP 4: The Council will ensure that tree protection legislation is properly enforced.

In producing this document the Council has undertaken to adhere to the principles of good enforcement set out in the Enforcement Concordat¹. The Principles of Good Enforcement, embodied within the concordat comprise Standards, Openness, Helpfulness, Complaints, Proportionality and Consistency. This guidance seeks to accord with the spirit of the Concordat and where relevant, adheres to the Regulators' Compliance Code².

¹ *Enforcement Concordat: Good Practice Guide for England and Wales. (DTI, 2003)*

² *Regulators' Compliance Code: Statutory Code of Practice for Regulators. (BERR, 2007)*

Tree protection legislation

As detailed within Part One of 'Trees East Lindsey', trees are protected when they are the subjects of Tree Preservation Orders or are within Conservation Areas (subject to certain exemptions). In general, it is an offence to cut down, uproot, lop, top, wilfully damage or wilfully destroy a protected tree without authorisation.

In the case of a tree protected by a Tree Preservation Order, the Council's consent is normally required prior to undertaking any works to the tree and this will require the submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the granting of consent subject to conditions.

In the case of a tree in a Conservation Area, six weeks notice must normally be served on the Local Planning Authority of any proposal to carry out works on the tree. During the six-week period, the Authority is required to consider the need to make a Tree Preservation Order to prevent the works being carried out. If the Authority takes no action within six weeks, the works may go ahead as notified. The Council has adopted the practice of informing the applicant of the decision before the six weeks expires where possible. (See section 4.0 of 'Trees East Lindsey: Part One' for more information.)

Other protection

Trees may also be protected on a short-term basis by conditions on planning consents. Such conditions typically require that new trees be planted and maintained, or that existing trees be retained as part of development, usually for a minimum of five years. An application can however be made to the Local Planning Authority to vary or remove a condition (such as to allow the removal of a tree).

If planning conditions are not complied with, the Local Planning Authority is empowered to serve an enforcement notice or breach of condition notice to secure compliance. There is a right of appeal to the Secretary of State against an enforcement notice. Planning condition compliance is dealt with by The Council's Planning Enforcement Officers, while all other areas of tree protection are dealt with by the Council's Tree Management Team in Neighbourhoods Service.

Offences

There are two offences, which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas.

Firstly, anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable if convicted to an unlimited fine. The Courts have held that it is not necessary for a tree to be obliterated for it to be "destroyed" for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.

Secondly, anyone who carries out works on a tree that are not likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.

Proving the offence

In order to bring a successful prosecution, the Authority must be able to prove that:

- (1) The defendant has carried out, or caused, or permitted works on the tree
- (2) The tree was protected
- (3) The works were carried out without the Authority's consent
- (4) The works were not exempt works

If it is claimed that works are exempt from the usual requirements of the legislation, it is for the defendant to prove, on the balance of probabilities, that the exemption applies.

Duty to replant

Whenever a tree has been removed in contravention of the legislation, or because it is dead, dying or dangerous, there is an automatic legal duty on the landowner to plant a replacement tree of a suitable size and species at the same place as soon as reasonably possible (unless that requirement is waived by the Local Planning Authority). The replacement tree is then subject to the same protection as the tree that was lost. If the landowner fails to comply with this requirement, the Authority may serve a Tree Replacement Notice within a period of four years to ensure compliance. There are rights of appeal against Tree Replacement Notices.

Responding to complaints

Incidents involving alleged contraventions of the tree protection legislation often come to light as a result of complaints received by the Council. Cases also come to light in other ways, such as during the monitoring of works on development sites or routine visits to adjacent properties.

When a complaint is received the Council will carry out an initial investigation, consisting of a check to establish whether the tree is protected and whether any consent has been granted. In most cases the Council's Arboricultural officer will also make a site visit. This will be undertaken as soon as practicable and in line with the following guidelines, based on the available information:

Response level	Response criteria	Response time
Level 1	Ongoing works likely to have a significant impact on public amenity.	Within 1 working day
Level 2	Completed works likely to have a significant impact on public amenity and ongoing works of lower amenity impact.	Within 5 working days
Level 3	Other works including longstanding issues.	Within 15 working days

The legislation confers a right to enter land to carry out such investigations and the relevant Council officers are authorised in its use, including to take other officers/individuals with them as necessary (e.g. for safe working or other reasons).

Where it appears that unauthorised tree works have been undertaken, notes and photographs will be taken during the site visit, which may be used as evidence later.

Investigating contraventions

Potential suspects will be identified and contacted as soon as possible in the process (this may be at the time of the initial site visit). They will be asked to give their observations on the incident and any relevant background information.

If on receipt of this information it appears that the person in question may have committed an offence and that answers to questions may be required as evidence, he or she will normally be invited to the Council's offices to undertake a tape-recorded interview under caution. This will be conducted under the provisions of the Police and Criminal Evidence (PACE) Act 1984 and the relevant Code of Practice will be adhered to.

In some cases it may however be necessary to caution a suspect during a site visit. In which case this will be issued in accordance with the code of practice issued under the Police and Criminal Evidence Act 1984 and the suspect will be advised that he or she is not under arrest, is free to leave at any time and is entitled to legal representation.

The identity of any complainant will be kept confidential and not disclosed to the alleged perpetrator as far as practicable and in accordance with both the Data Protection Act 1998 and Freedom of Information Act 2000. It will however be made clear to the complainant that if the case comes to court it is most likely that they will be required as a witness and in that case they would not normally be entitled to confidentiality. Complainants will be kept informed of the course of the investigation and its outcome.

Complainants and any other witnesses will be contacted as appropriate and may be requested to provide written statements to be used as evidence in court. Witnesses will be informed that they may be required to appear in court to give evidence and be cross-examined as necessary. Suspects will be given adequate and fair opportunity to give their side of events during the course of investigations.

Options for action

The Council has a range of possible courses of action available to deal with cases of unauthorised works on protected trees. These include the following:

- **Initiate a prosecution** (which may be for destroying the tree or for lesser works to it).
- **Administer a simple caution.** This is a formal process whereby the perpetrator signs a statement admitting the offence and submitting to the caution. It may be referred to at the sentencing stage if the same person is ever found guilty of a subsequent offence. It may also be taken into consideration when deciding whether or not to prosecute at a later stage for another similar offence. Administering a simple caution is only an option if the suspect admits the offence.
- **Require the planting of a replacement tree for each tree destroyed,** under section 206 of the Town and Country Planning Act 1990.
- **Serve a replanting direction under section 207 of the same Act.** This is a formal procedure to secure replacement planting, which can be invoked if the landowner does not otherwise comply with a duty to carry out replacement planting.
- **Informal action,** such as written correspondence requesting remedial works and warning of the potential for legal action and fines if a further contravention occurs.

Selection of appropriate action

Decisions as to what action to take in cases of unauthorised works on trees will be taken in the public interest, with each case being dealt with on its own merits. In most cases, a prosecution will not be brought if the works would have been allowed, had they been applied for.

A prosecution will not normally be brought unless the unauthorised works have resulted in a loss of public amenity. When assessing amenity, the Council will use a system based on the Arboricultural Association's Guidance Note No.4: 'Amenity Valuation of Trees and Woodland' by D.R. Helliwell, which is known as 'The Helliwell System'. (See Policy Guidance Note: TP1 'Public Amenity Assessment'.)

In considering whether to bring a prosecution, regard will be had to the likelihood of the offence being repeated and the degree to which a prosecution would act as an effective deterrent. Regard will also be had to any financial advantage perceived to have been gained by carrying out the unauthorised works and whether the perpetrator has been prosecuted, cautioned or warned for similar offences in the past.

Whilst ignorance of the law is not an excuse, all relevant issues associated with the case will be taken into account including, where appropriate, the attitude and circumstances of the perpetrator, any indication that he/she was acting in good faith or other relevant mitigating factors.

Enforcement decisions

Two tests will be applied in cases where a prosecution appears likely, consideration of which will be undertaken in consultation with the Council's Legal Section:

The Evidential Test: A prosecution will not be commenced unless there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction.

The Public Interest Test: A prosecution will only be brought where this is in the public interest. This can include using enforcement action as an effective deterrent.

Cautioning may be applied in cases where a prosecution can properly be brought but where such action is not considered appropriate in the circumstances of the case. Cautions will be used in accordance with Home Office Guidance³. Persons who have previously received a formal caution will normally be dealt with by prosecution.

Tree enforcement issues will be dealt with by the Arboricultural Officer, in consultation with other officers within the Tree Management Team in Neighbourhoods Service and with the Council's Legal Service.

In each case where it appears that unauthorised works have been carried out on a protected tree (or trees), the Arboricultural Officer will submit an Enforcement Reporting Form (Form TPF 1) to the Street Scene Business Manager following an initial investigation. This report will briefly outline the details of the case and make recommendations for further action.

In cases where the Street Scene Business Manager considers that prosecution may be appropriate, following consultation with Legal Services, a report will be produced for consideration by the Council's Planning Committee.

³ Home Office Circular 016 / 2008: Simple Cautioning of Adult Offenders

Cautions

Simple cautions will normally be issued at the Council offices. The perpetrator will be contacted in writing and requested to submit to the caution. Details of the offence will be provided in the letter, along with an explanation of the significance of the caution. Records will be kept of formal cautions issued and will be referred to in court if the offender commits a further offence.

When a decision has been made to issue a formal caution, but the offender refuses to submit to the caution, the Street Scene Business Manager will reconsider the case, including a consideration of whether to bring a prosecution.

Enforcing replanting

In cases where a tree has been destroyed, the planting of a replacement tree will normally be required irrespective of whether the perpetrator has been prosecuted or cautioned, in accordance with Policy TP7 of the Council's adopted Tree Policy (Trees East Lindsey: Part One):

TP7: When a protected tree is removed we will require a replacement tree to be planted where possible.

Where replacement planting is required as a result of lawful or unlawful tree removal, this will be recorded on the Council's 'Replant Database' and monitoring will be carried out to ensure compliance.

If no replacement tree has been planted within a reasonable period following notification of a duty to do so, a Tree Replacement Notice (TRN) Form (Form TPF 2) will be completed outlining the case for or against serving a TRN and recording the decision.

If a TRN is served but not complied with after expiry of the 'Time for Compliance' as stated in the notice, the Council will enter the land, plant the tree(s) and seek to recover all reasonable expenses incurred in doing so, by placing a land charge on the property if necessary.





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